

III. REMARKS

Claims 1-12 and 14-16 are pending in this application. Claim 13 was previously cancelled and claim 15 is cancelled herein. By this amendment, claim 1 has been amended. Applicants do not acquiesce in the correctness of the rejections and reserves the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action claim 1-12 and 14-16 are rejected under 35 USC 112, second paragraph. The Examiner cites specific examples of apparent violations of 112 only for claims 1, 15, and 16. With regard to the rejection of claim 16, Applicants are claiming a system that *inter alia* includes a transmission means that is capable of carrying out the method of claim 1. In reply, Applicants have amended claim 1 and accordingly request withdrawal of the rejection.

In the Office Action, claim 15 is rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter. In response, Applicants have cancelled claim 15.

In the Office Action, claims 1-12 and 14 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Stefik *et al.* (US. Patent No. 6,236,971) in view of Griswold (U.S. Patent No. 5,940,504).

Regarding claim 1, Applicants respectfully request withdrawal of the rejection because the Examiner has not made the requisite showing of a *prima facie* case of obviousness. Assuming *arguendo* that it may be obvious to combine Stefik and Griswold, the cited combination still does not teach, or suggest, each and every element of claim 1, as is required.

Specifically, the combination does not teach, or suggest, *inter alia* "initiation of a return traffic of acknowledgement codes (ACKs) by the client to the server wherein a payment token is associated with each acknowledgement code or with a number of acknowledgement codes" together with "accumulation of the payment tokens received from the client in a pay-for-each-packet-received-as-acknowledged-by-the-client mode of operation", as in claim 1, as amended. The Office Action admits that Stefik does not disclose this second element (above), but cites Col. 4, lines 37-40, in Griswold for supporting disclosure of this element. Page 4, Item 7.

Interpreting Griswold only for the purposes of this response, Applicants submit that, to the contrary, Griswold does not teach or suggest any type of methodology that associates the acknowledgements (ACK) for the regular flow of packets for use as payment tokens, wherein the flow of packets makes up the digital work, as in the present invention. A careful reading of Griswold, including the claims, "Summary of the Invention" section, and the specification in general, indicates a proprietary system that employs a separate and distinct "request datagram" and "reply datagram" communication that are not part of the "regular flow of packets". The use of datagrams in Griswold does not teach, or suggest, using ACKs of the regular flow of packets. Griswold defines datagrams as "messages that *described information related to the use of license product 1*" (emphasis added). Col. 5, lines 44-45. Further, Griswold states "[i]t is noted that request datagrams 3 are periodically sent while product 1 is in use." Col. 5, lines 57-58. Clearly, these statements in Griswold, and Figure 1 for example, all show that the use of datagrams 3 are entirely separate and distinct from the license product 1 and/or data portion 1B.

Accordingly, Applicants submit that there is no teaching or suggestion in Griswold of any type of a method that employs a payment token associated with ACKs, wherein ACKs are in response to regular flow of packets of the digital work, as that in claim 1, as amended. Further,

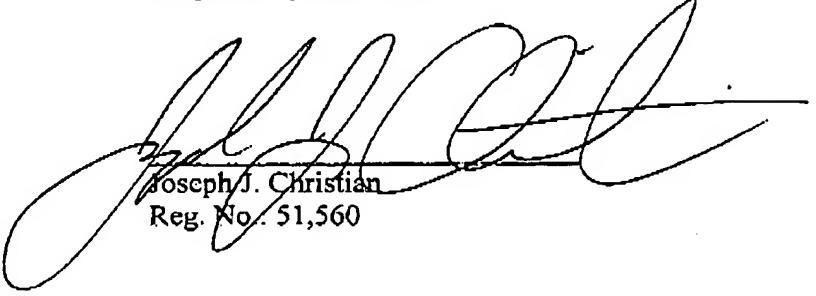
Stefik does not remedy this glaring deficiency in Griswold. Therefore, Applicants respectfully request withdrawal of the rejection of claim 1.

With respect to dependent claims 2-12, 14, and 16, Applicants herein incorporate the arguments presented above with respect to the independent claim from which the claims depend. The dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

IV. CONCLUSION

In light of the above remarks, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,



Joseph J. Christian
Reg. No. 51,560

Date: November 18, 2005

Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)